IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.1498 OF 1994

The Pune Municipal Corporation ...Applicant

vs.

1.Indrajit Banarasdas Agarwal
2.State of Maharashtra ...Respondents

Mr.R.G.Ketkar for the Applicant
Mr.D.P.Adsule,A.P.P. for State
Mr.V.G.Peshve for Respondent No.1.

CORAM: A.S.OKA,J.
DATE : DECEMBER 22,2006.

P.C.:

1. Heard Shri Ketkar for the Applicant in support of prayer for grant of leave to prefer an Appeal. The acquittal of the Respondents is for offence punishable under section 398 of the Bombay Provincial Municipal Corporations Act, 1949 (hereinafter referred to said Act of 1949).

2. The allegation of the Applicant-Pune Municipal Corporation original complainant is that on 15th February 1988 at about 11.00 a.m. in the morning the tempo bearing No.MTO 3589 was intercepted by the Officers of the Applicant. At that time none of the documents such as invoices, octroi passes, were produced though the same were demanded. After making further enquiry, it was revealed that that the tempo was brought inside the octroi limits of the Applicant-Corporation without stopping at octroi naka and without paying the octroi. According to the case of the Applicant, though a demand for

payment of octroi was made, compliance was not made by the Respondents. On 20th April 1998, an assessment order was passed. The Respondents filed an Appeal under section 406 of the said Act of 1949 for challenging the order. The learned Judicial Magistrate First Class, Pune acquitted the Respondents.

3. Shri Ketkar, learned Counsel for the Applicant submitted that there was no reply to the demand notice. He submitted that the truck containing goods was brought without paying octroi. He submitted that the subsequent deposit of the octroi amount in the Appeal preferred by the Respondents is no ground to acquit the Respondents. Shri Peshve appearing for the Respondent No.1 supported the impugned Judgment and Order.

4. I have considered the submissions. Apart from the findings on merits, the learned Trial Judge has recorded a finding that there was no proper delegation of the powers by the Commissioner to the Naka Officer. The learned Judge found that the godown of the Respondents was within the jurisdiction of the Pune Municipal Corporation. The learned Judge found that the octroi was paid in January 1988 when the goods were brought to the godown. The learned Judge referred to the invoice produced before the Court and the escort passes dated 11th January 1988 and 12th February 1988. The evidence shows that the Officers of the applicant did not verify whether the

invoice and the receipt produced by the respondents were really issued from the Vishrantwadi Naka.

5. The learned Trial Judge relied upon the Receipts at Exh.28 to 36 showing payment of octroi amount of Rs.3,229/- to the Applicant.

6. Thus, this is a case where a serious doubt is created as to whether the Respondents had brought their vehicle within the octroi limits by evading the payment of octroi. The entire amount has been paid by the Respondents long back. It is well settled that the presumption of innocence is further strengthened by the order of acquittal. Even assuming that another view is possible to be taken on the basis of the evidence on record is no ground to interfere in an Appeal against acquittal. In the present case, the view taken by the learned Trial Judge is certainly a possible view. Hence, no case is made out for grant of leave. Application is rejected.

JUDGE